

AMENDED IN ASSEMBLY SEPTEMBER 11, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 690

Introduced by Senator Stone

February 27, 2015

An act to amend Section ~~637.7~~ 646.9 of the Penal Code, relating to ~~privacy~~; *stalking*.

LEGISLATIVE COUNSEL'S DIGEST

SB 690, as amended, Stone. ~~Privacy~~; *Stalking*.

Existing law defines the crime of stalking as willfully, maliciously, and repeatedly following, or willfully and maliciously harassing, another person, and making a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family.

This bill would expand that definition to include willfully, maliciously, and repeatedly tracking a person with an electronic tracking device, as defined. By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law makes it a misdemeanor to use an electronic tracking device to determine the location or movement of a person. Existing law defines electronic tracking device to mean any device attached to a~~

~~vehicle or other movable thing that reveals its location or movement by the transmission of electronic signals.~~

~~This bill would expand those provisions to include using an electronic tracking device to determine the location or movement of an object as well as a person. The bill would define electronic tracking device as any electronic or mechanical device that permits the tracking of the movement of a person or object. By expanding the definition of a crime, this bill would create a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 646.9 of the Penal Code is amended to
2 read:
3 646.9. (a) Any person who (1) willfully, maliciously, and
4 repeatedly—~~follows~~ *follows*; (2) *willfully, maliciously, and*
5 ~~repeatedly tracks with an electronic tracking device~~, or (3) willfully
6 and maliciously harasses, another person and who makes a credible
7 threat with the intent to place that person in reasonable fear for his
8 or her safety, or the safety of his or her immediate family, is guilty
9 of the crime of stalking, punishable by imprisonment in a county
10 jail for not more than one year, or by a fine of not more than one
11 thousand dollars (\$1,000), or by both that fine and imprisonment,
12 or by imprisonment in the state prison.
13 (b) Any person who violates subdivision (a) when there is a
14 temporary restraining order, injunction, or any other court order
15 in effect prohibiting the behavior described in subdivision (a)
16 against the same party, shall be punished by imprisonment in the
17 state prison for two, three, or four years.
18 (c) (1) Every person who, after having been convicted of a
19 felony under Section 273.5, 273.6, or 422, commits a violation of
20 subdivision (a) shall be punished by imprisonment in a county jail
21 for not more than one year, or by a fine of not more than one

1 thousand dollars (\$1,000), or by both that fine and imprisonment,
2 or by imprisonment in the state prison for two, three, or five years.

3 (2) Every person who, after having been convicted of a felony
4 under subdivision (a), commits a violation of this section shall be
5 punished by imprisonment in the state prison for two, three, or
6 five years.

7 (d) In addition to the penalties provided in this section, the
8 sentencing court may order a person convicted of a felony under
9 this section to register as a sex offender pursuant to Section
10 290.006.

11 (e) For the purposes of this section, “harasses” means engages
12 in a knowing and willful course of conduct directed at a specific
13 person that seriously alarms, annoys, torments, or terrorizes the
14 person, and that serves no legitimate purpose.

15 (f) For the purposes of this section, “course of conduct” means
16 two or more acts occurring over a period of time, however short,
17 evidencing a continuity of purpose. Constitutionally protected
18 activity is not included within the meaning of “course of conduct.”

19 (g) For the purposes of this section, “credible threat” means a
20 verbal or written threat, including that performed through the use
21 of an electronic communication device, or a threat implied by a
22 pattern of conduct or a combination of verbal, written, or
23 electronically communicated statements and conduct, made with
24 the intent to place the person that is the target of the threat in
25 reasonable fear for his or her safety or the safety of his or her
26 family, and made with the apparent ability to carry out the threat
27 so as to cause the person who is the target of the threat to
28 reasonably fear for his or her safety or the safety of his or her
29 family. It is not necessary to prove that the defendant had the intent
30 to actually carry out the threat. The present incarceration of a
31 person making the threat shall not be a bar to prosecution under
32 this section. Constitutionally protected activity is not included
33 within the meaning of “credible threat.”

34 (h) For purposes of this section, the term “electronic
35 communication device” includes, but is not limited to, telephones,
36 cellular phones, computers, video recorders, fax machines, or
37 pagers. “Electronic communication” has the same meaning as the
38 term defined in Subsection 12 of Section 2510 of Title 18 of the
39 United States Code.

1 (i) This section shall not apply to conduct that occurs during
2 labor picketing.

3 (j) If probation is granted, or the execution or imposition of a
4 sentence is suspended, for ~~any~~ a person convicted under this
5 section, it shall be a condition of probation that the person
6 participate in counseling, as designated by the court. However, the
7 court, upon a showing of good cause, may find that the counseling
8 requirement shall not be imposed.

9 (k) (1) The sentencing court also shall consider issuing an order
10 restraining the defendant from any contact with the victim, that
11 may be valid for up to 10 years, as determined by the court. It is
12 the intent of the Legislature that the length of ~~any~~ a restraining
13 order be based upon the seriousness of the facts before the court,
14 the probability of future violations, and the safety of the victim
15 and his or her immediate family.

16 (2) This protective order may be issued by the court whether
17 the defendant is sentenced to state prison, county jail, or if
18 imposition of sentence is suspended and the defendant is placed
19 on probation.

20 (l) For purposes of this section, “immediate family” means ~~any~~
21 a spouse, parent, child, ~~any~~ a person related by consanguinity or
22 affinity within the second degree, or any other person who regularly
23 resides in the household, or who, within the prior six months,
24 regularly resided in the household.

25 (m) The court shall consider whether the defendant would
26 benefit from treatment pursuant to Section 2684. If it is determined
27 to be appropriate, the court shall recommend that the Department
28 of Corrections and Rehabilitation make a certification as provided
29 in Section 2684. Upon the certification, the defendant shall be
30 evaluated and transferred to the appropriate hospital for treatment
31 pursuant to Section 2684.

32 (n) *For the purposes of this section, “electronic tracking device”*
33 *means an electronic or mechanical device that permits tracking*
34 *of the movement of a person or object.*

35 *SEC. 2. No reimbursement is required by this act pursuant to*
36 *Section 6 of Article XIII B of the California Constitution because*
37 *the only costs that may be incurred by a local agency or school*
38 *district will be incurred because this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 ~~SECTION 1. Section 637.7 of the Penal Code is amended to~~
5 ~~read:~~

6 ~~637.7. (a) No person or entity in this state shall use an~~
7 ~~electronic tracking device to determine the location or movement~~
8 ~~of a person or object.~~

9 ~~(b) This section shall not apply when the registered owner of a~~
10 ~~vehicle, the owner of an object, or the subscriber, lessor, or lessee~~
11 ~~of a vehicle or object has consented to the use of the electronic~~
12 ~~tracking device with respect to that vehicle or object.~~

13 ~~(c) This section shall not apply to the lawful use of an electronic~~
14 ~~tracking device by a law enforcement agency.~~

15 ~~(d) As used in this section, "electronic tracking device" means~~
16 ~~any electronic or mechanical device that permits the tracking of~~
17 ~~the movement of a person or object.~~

18 ~~(e) A violation of this section is a misdemeanor.~~

19 ~~(f) A violation of this section by a person, business, firm,~~
20 ~~company, association, partnership, or corporation licensed under~~
21 ~~Division 3 (commencing with Section 5000) of the Business and~~
22 ~~Professions Code shall constitute grounds for revocation of the~~
23 ~~license issued to that person, business, firm, company, association,~~
24 ~~partnership, or corporation, pursuant to the provisions that provide~~
25 ~~for the revocation of the license as set forth in Division 3~~
26 ~~(commencing with Section 5000) of the Business and Professions~~
27 ~~Code.~~

28 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
29 ~~Section 6 of Article XIII B of the California Constitution because~~
30 ~~the only costs that may be incurred by a local agency or school~~
31 ~~district will be incurred because this act creates a new crime or~~
32 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
33 ~~for a crime or infraction, within the meaning of Section 17556 of~~
34 ~~the Government Code, or changes the definition of a crime within~~
35 ~~the meaning of Section 6 of Article XIII B of the California~~
36 ~~Constitution.~~